

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	WC Docket No. 01-92

ORDER

Adopted: September 28, 2021

Released: September 28, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we resolve, in part, a petition filed by Nucla Naturita Telephone Company (NNTC) seeking a waiver of section 54.316 of the Commission's rules.¹ NNTC seeks a waiver to avoid non-compliance with its Connect America Fund (CAF) A-CAM filing obligations resulting from its failure to (a) timely upload certain buildout data into the HUBB and (b) certify certain location data that was properly filed in the HUBB.²

2. We find that NNTC has established good cause to waive our rules as to NNTC's failure to certify location data that was timely filed in the HUBB. Accordingly, as discussed below, we grant, in part, NNTC's petition for waiver. However, this Order does not address NNTC's petition for waiver regarding its failure to timely upload location data into the HUBB, and that issue remains pending.

II. BACKGROUND

3. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund by, among other things, establishing the CAF to support explicitly broadband-capable networks.³ In the 2016 *Rate-of-Return Reform Order*,

¹ *Nucla Naturita Telephone Company Request for Waiver of Section 54.316*, WC Docket No. 10-90, et. al (filed Feb. 22, 2021), <https://ecfsapi.fcc.gov/file/1022254674815/NNTC%20Waiver.FINAL.pdf> (NNTC Petition). See also *Letter from Salvatore Tailfefer, Jr., Counsel, NNTC to Marlene Dortch, Secretary, FCC*, WC Docket No. 10-90 (filed May 12, 2021), <https://ecfsapi.fcc.gov/file/1051227317364/NNTC.Ex%20Parte.pdf> (NNTC May 2021 Ex Parte); *Letter from Salvatore Tailfefer, Jr., Counsel, NNTC to Marlene Dortch, Secretary, FCC*, WC Docket No. 10-90 (filed June 7, 2021), <https://ecfsapi.fcc.gov/file/10607751919160/NNTC.Ex%20Parte%206-7.pdf> (NNTC June 2021 Ex Parte); *Letter from Salvatore Tailfefer, Jr., Counsel, NNTC to Marlene Dortch, Secretary, FCC*, WC Docket No. 10-90 (filed August 16, 2021), <https://ecfsapi.fcc.gov/file/1081536424570/NNTC.Ex%20Parte.3.pdf> (August 2021 Ex Parte). See 47 CFR § 54.316.

² NNTC Petition at 1, 3; see 47 CFR § 54.316.

the Commission adopted significant reforms to the rules governing the provision of universal service support to rate-of-return carriers.⁴ The Commission adopted a voluntary path by which rate-of-return carriers may elect model-based support, known as the Alternative Connect America Cost Model (A-CAM), for a term of 10 years in exchange for meeting defined build-out obligations of voice and broadband services.⁵

4. NNTC is a rate-of-return carrier that has received \$956,121 in annual A-CAM support to provide telecommunications services in Colorado since 2017.⁶ This support is conditioned upon NNTC meeting its deployment milestones: NNTC must deploy to 40% of its total locations by December 31, 2020; to 50% of its total locations by December 31, 2021; to 60% of its total locations by December 31, 2022; to 70% of its total locations by December 31, 2023; to 80% of its total locations by December 31, 2024; to 90% of its total locations by December 31, 2025 and to 100% of its total locations by December 31, 2026.⁷ The Commission's rules require A-CAM carriers, including NNTC, to report in the HUBB portal, maintained by the Universal Service Administrative Company (USAC), annually by March 1, the locations to which it deployed in the prior calendar year and certify that "by the end of the calendar year, it was offering broadband meeting the requisite public interest obligations . . . to the required percentage of its supported locations in each state."⁸ The Commission allowed recipients to report pre-existing locations in the HUBB to be counted towards the interim and final milestones.⁹

5. In February 2021, NNTC submitted a waiver petition stating that it failed to properly certify nearly 300 locations in its March 2019 HUBB filing.¹⁰ Specifically, NNTC uploaded 293 locations in the HUBB. However, only 11 were properly certified and 282 were not certified.¹¹ NNTC explained that it discovered this error during a 2021 internal review.¹² The failure to properly certify these 282 locations caused NNTC to fail to meet its first interim milestone requirement. The *NNTC Petition* asks the Commission to allow NNTC to certify and count towards its interim and final milestones the 282 locations that NNTC timely reported but failed to properly certify.¹³ NNTC argues that strict

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³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17712, para. 128 (2011), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

⁴ *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3089, para. 1 (2016) (*Rate-of-Return Reform Order*).

⁵ *Id.* at 3094-117, paras. 17-79.

⁶ *NNTC Petition* at 2. *See also Wireline Competition Bureau Announces Results of Rate-Of-Return Carriers*, 31 FCC Rcd 11966, 11974, Attachment (2016); *Wireline Competition Bureau Authorizes 182 Rate-Of-Return Companies to Receive \$54 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, Public Notice, WC Docket No. 10-90, 32 FCC Rcd 842, 845 Attachment (2017).

⁷ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3100-01, para. 32; 47 CFR § 54.311(d).

⁸ 47 CFR § 54.316(b)(1).

⁹ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3165-66, para. 213 (setting March 1, 2019 as the deadline to file geocodes for pre-existing locations). *See also Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, 12902 (WCB 2016) (*HUBB Reporting Public Notice*).

¹⁰ *See NNTC Petition* at 3.

¹¹ *Id.* NNTC explains that 276 of the uncertified locations were pre-existing locations and 6 of the uncertified locations were newly-deployed locations.

¹² *Id.*

¹³ *Id.* at 3-4.

compliance with the Commission's rules is not in the public interest, because NNTC "actually had qualifying service available to a substantial portion of eligible locations, well in advance of the Commission's milestone requirement," and that preventing the correction would undermine the purpose of the reporting rules to track progress and determine whether the funds are being used appropriately.¹⁴ Moreover, NNTC argues that this was simply an administrative error that should be allowed to be corrected pursuant to precedent.¹⁵ NNTC states there was no way for it to have known this mistake occurred until its recent internal audit, and the company argues the accuracy of the data warrants deviation from strict compliance with the Commission's rules.¹⁶

6. In May and June 2021, NNTC met with the Wireline Competition Bureau (Bureau) to provide updated figures on the impact of its error in meeting its interim and final buildout milestones.¹⁷ Specifically, NNTC explained that, if allowed to certify and count the uncertified locations towards its deployment milestones, the company easily meets and exceeds the interim milestone, and would be in compliance with the buildout requirements.¹⁸

7. In August 2021, NNTC provided further clarification by providing the specific list of locations it timely uploaded but did not timely certify.¹⁹ This list is included in Exhibit A.

III. DISCUSSION

8. Generally, the Commission's rules may be waived for good cause shown.²⁰ Good cause is shown, and waiver is appropriate, only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²¹ The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy.²² The Commission has consistently held that requests to waive or extend construction obligations will not be routinely granted.²³ Consistent with Commission precedent, support recipients should be aware that employee issues, vendor problems, equipment issues, inclement weather, and last minute delays occur in the regular course of business, and that these circumstances alone will not support waiver of Commission

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 3 (citing *In re WCB Addresses Several Petitions Requesting Waiver of the HUBB Deadline*, 34 FCC Rcd 11139 (2019) (*High-Cost Waiver Order*)).

¹⁶ *Id.* at 2-3.

¹⁷ See *NNTC May 2021 Ex Parte*; *NNTC June 2021 Ex Parte*.

¹⁸ See *NNTC May 2021 Ex Parte* at 1; *NNTC June 2021 Ex Parte* (stating that allowing the certification of timely-filed locations would make NNTC 154% compliant with the December 2020 milestone requirement).

¹⁹ See *NNTC August 2021 Ex Parte*.

²⁰ 47 CFR § 1.3.

²¹ See *Standing Rock Telecommunications, Inc., Amended Request for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations*, WT Docket No. 10-208, Order, 34 FCC Rcd 9598, 9603-04, para. 11 (WCB/WTB/OEA 2019) (*Standing Rock Order*); *Leaco Rural Telephone Cooperative, Inc. and Pine Belt Cellular, Inc.*, WT Docket No. 10-208, Order, 31 FCC Rcd 9001, 9006-07, para. 15 (WTB 2016) (*Leaco/Pine Belt Order*); *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)); see also *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²³ See *Skybridge Spectrum Foundation*, Order, 33 FCC Rcd 8138, 8145, para. 17 (WTB-MD 2018); *Wireless Telecommunications Bureau Reminds Wireless Licensees of Construction Obligations*, Public Notice, 32 FCC Rcd 4802, 4802-05 (WTB 2017).

deadlines.²⁴ Additionally, the Bureau has reminded recipients that it remains the carrier's responsibility to familiarize itself with any applicable regulations and ensure that its filings are timely received, regardless of the time and method of their filings.²⁵ The Bureau now expects that, after the initial reporting and certification deadline, carriers are familiar with their reporting requirements and the HUBB interface.²⁶

9. We find that NNTC has established special circumstances that warrant granting its petition, in-part, to allow certification of the locations that were timely reported but not properly certified. We have confirmed that NNTC uploaded into the HUBB all of the identified locations by March 1, 2019. Additionally, based on consultations with USAC, we believe that NNTC mistakenly certified only the first page of its location submission instead of certifying each page of its submission. Because each page in the HUBB system only displays up to ten entries, certifying the first page meant that NNTC only properly certified the first ten entries (representing 11 locations) instead of the intended 282 locations reflected in the entire submission. As NNTC did in fact timely upload the remaining 282 locations in the HUBB database, and certified some of the reported locations, we find that NNTC made a good faith effort to timely certify all reported locations.

10. We agree with NNTC that strict compliance with Commission rules in this case does not serve the public interest. The certification error appears to be an inadvertent administrative oversight discovered through proactive internal review by the company, and NNTC took immediate action to resolve the error by contacting USAC and filing a waiver petition with the Commission.²⁷ Most importantly, NNTC uploaded these 282 locations into the HUBB by the March 1 deadline. Compliance with the Commission's location filing deadlines is critical to ensuring that the Commission can accurately track broadband deployment and can update the CAF Broadband map, which allows the public to see where broadband deployment has occurred in the prior year. Accordingly, we believe NNTC has demonstrated good cause to allow all 282 timely-filed locations to be certified and to be counted towards

²⁴ See, e.g., 1998 Biennial Regulatory Review--Streamlining of Mass Media Applications, Rules, and Processes et al., Memorandum Opinion and Order, 14 FCC Rcd 17525, 17539, para. 35 (1999) (finding that the effects of delays due to inclement weather on construction timelines are adequately overcome by a three-year construction term making additional time unwarranted); *Redwood Wireless Minnesota, LLC, and Redwood Wireless Wisconsin LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements*, Order, 17 FCC Rcd 22416, 22419-20 (WTB 2002) (construction delays resulting from business disputes were exercise of business judgment and were not outside Petitioner's control); *Eldorado Communications LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements*, Order, 17 FCC Rcd 24613, 24616, para. 7 (WTB 2002) (licensee's determination to initially deploy TDMA system and subsequently to adopt GSM with months remaining before construction deadline was business decision within its control); *Bristol MAS Partners Request for Extension of Time in Which to Construct and Place into Operation Multiple Address System Stations WPJF864 Through WPJF87*, Order, 14 FCC Rcd 5007, 5010, para. 8 (WTB 1999) (equipment installation or delivery not delayed for some unique reason, and licensee's failing to obtain equipment was business decision); *Application for Review of Specialized Mobile Radio Station WAY-671, Licensed to AAT Electronics Corporation, Staten Island, New York*, Memorandum Opinion and Order, 93 FCC 2d 1034, 1047, para. 46 (1983) (decision not to market service aggressively because of equipment uncertainties is within licensee's control); *Application for Review of Business Radio Communications Systems, Inc., Licensee of 800 MHz SMR System WZF-975, Laurel, Maryland*, Memorandum Opinion and Order, 102 FCC 2d 714, 716-17, paras. 6-7 (1985) (construction delay caused by zoning challenge not a circumstance beyond licensee's control); *Application for Review of Specialized Mobile Radio Station WQA-505, Licensed to Texas Two-Way, Inc., Fort Worth, Texas*, Memorandum Opinion and Order, 98 FCC 2d 1300, 1303, para. 8 (1984), *aff'd sub nom., Texas Two-Way, Inc. v. FCC*, 762 F.2d 138 (D.C. Cir. 1985) (licensee is responsible for the delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision).

²⁵ See *High-Cost Waiver Order*, 34 FCC Rcd at 11146, para. 20.

²⁶ *Id.*

²⁷ *NNTC Petition* at 3.

NNTC's interim and final milestones.

11. Therefore, we conclude that the public interest will be served by granting, in part, NNTC's petition and waiving Commission rules to the extent described herein.²⁸ NNTC's petition for waiver regarding its failure to timely upload location data into the HUBB remains pending.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, under the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 323, and 603 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 503, 1302, and sections 1.1 and 1.3 of the Commission's rules, 47 CFR §§ 1.1, 1.3, the *Nucla Naturita Telephone Company Request for Waiver of Section 54.316*, as discussed herein, is hereby GRANTED IN PART.

13. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted to the Universal Service Administrative Company.

14. IT IS FURTHER ORDERED that, under section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a), this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief
Wireline Competition Bureau

²⁸ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Order, 32 FCC Rcd 968, 975-76, para. 21 (2017). See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103 (“[A]ll broadband obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already subsidized by an ‘unsubsidized competitor.’”).

Exhibit A

HUBB ID Number				
28648509	28648552	28648595	28648643	28648690
28648510	28648553	28648596	28648644	28648691
28648511	28648554	28648597	28648645	28648692
28648512	28648555	28648598	28648646	28648693
28648513	28648556	28648600	28648647	28648694
28648514	28648557	28648601	28648649	28648695
28648516	28648558	28648602	28648650	28648696
28648517	28648560	28648603	28648651	28648697
28648518	28648561	28648604	28648653	28648699
28648519	28648562	28648605	28648655	28648700
28648520	28648563	28648606	28648656	28648701
28648521	28648564	28648607	28648657	28648702
28648522	28648565	28648608	28648658	28648703
28648523	28648566	28648610	28648659	28648704
28648524	28648567	28648611	28648660	28648705
28648525	28648568	28648612	28648661	28648706
28648526	28648569	28648613	28648662	28648707
28648527	28648570	28648614	28648664	28648709
28648528	28648571	28648615	28648665	28648710
28648529	28648572	28648616	28648666	28648711
28648530	28648573	28648617	28648668	28648712
28648531	28648574	28648618	28648669	28648714
28648532	28648575	28648619	28648670	28648715
28648533	28648576	28648620	28648671	28648654
28648534	28648577	28648621	28648672	28648663
28648535	28648578	28648622	28648673	28648667
28648536	28648579	28648623	28648674	28648698
28648537	28648580	28648626	28648675	28648708
28648538	28648581	28648627	28648676	28648713
28648539	28648582	28648628	28648677	
28648540	28648583	28648629	28648678	
28648541	28648584	28648630	28648679	
28648542	28648585	28648631	28648680	
28648543	28648586	28648632	28648681	
28648544	28648587	28648633	28648682	
28648545	28648588	28648635	28648683	
28648546	28648589	28648636	28648684	
28648547	28648590	28648637	28648685	
28648548	28648591	28648638	28648686	
28648549	28648592	28648639	28648687	
28648550	28648593	28648640	28648688	
28648551	28648594	28648641	28648689	